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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 09, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PHAT N STICKY, LLC,

Plaintiff,

v.

TOP SHELF LED, INC.,

Defendant.

No. 2:22-CV-00071-SAB

**ORDER DENYING
PLAINTIFF'S MOTION TO
REMAND**

Before the Court is Plaintiff's Motion to Remand, ECF No. 6. The motion was considered without oral argument.¹ Plaintiff is represented by Gabriel Saade. Defendant is represented by Matthew Wojcik and Thomas Stratton.

Having reviewed the briefing and the applicable case law, the Court denies Plaintiff's motion.

Factual Background

The following facts are drawn from Plaintiff's Complaint, ECF No. 1-1.

Plaintiff Phat N Sticky, LLC is a producer-processor of cannabis. Plaintiff had its principal place of business in Spokane Valley, Washington. Defendant Top

¹ Plaintiff's Motion to Remand is presently set for oral argument on June 24, 2022 at 10:30 a.m. ECF No. 14. However, after reviewing the briefing, the Court has determined that oral argument is not warranted and thus proceeds on the motion. LCivR 7(i)(3)(B)(iii).

ORDER DENYING PLAINTIFF'S MOTION TO REMAND # 1

1 Shelf LED, Inc. is a California corporation that manufactures and sells commerce
 2 lighting solutions, such as lamps and its accessories/fixtures.

3 In 2019, Plaintiff purchased products from Defendant, including Master
 4 Pursuit: Grower's Choice MP HPS System; Master Pursuit: Grower's Choice MP
 5 CMH System; HPS Bulb 1210, MH Bulb 1228; and/or Gavita Fixture 277 ("the
 6 Light Products"). Plaintiff states that it installed Defendant's Light Products at its
 7 business premises in accordance with Defendant's instructions.

8 However, on September 14, 2019, Plaintiff states that Defendant's Light
 9 Products self-ignited and/or imploded and/or exploded, resulting in a fire that
 10 burned down Plaintiff's facility, equipment, and cannabis products. Plaintiff
 11 alleges that this fire occurred because of defects in Defendant's Light Products;
 12 Defendant misled its customers about the safety/effectiveness of its Light Products;
 13 Defendant failed to adequately warn and instruct its customers about the dangers of
 14 its Light Products; and Defendant knew that its Light Products were not safe for
 15 their intended use.

16 Procedural History

17 Plaintiff filed its Complaint in the Spokane County Superior Court on
 18 December 14, 2021. ECF No. 1-1. Plaintiff asserted claims for negligence; strict
 19 liability under the Washington Product Liability Act; negligence under the
 20 Washington Product Liability Act; and breach of warranty. *Id.*

21 Defendant removed the Complaint to this Court on April 14, 2022. ECF No.
 22 1. Defendant filed a Motion to Dismiss on April 19, 2022. ECF No. 5.

23 Plaintiff filed the present Motion to Remand on April 27, 2022. ECF No. 6.
 24 Plaintiff filed a Motion for Sanctions as part of its response to Defendant's Motion
 25 to Dismiss on May 10, 2022. ECF No. 11.

26 Discussion

27 Plaintiff argues that the Court should remand this case to Spokane County
 28 Superior Court because Defendant's removal was untimely. Plaintiff filed its

ORDER DENYING PLAINTIFF'S MOTION TO REMAND # 2

1 Complaint on December 14, 2021, yet Defendant did not file its Notice of Removal
 2 until April 14, 2022. Thus, Plaintiff argues removal was untimely under 28 U.S.C.
 3 § 1446(b)(1), which states that a defendant must file a notice of removal within 30
 4 days of receiving the initial pleading.

5 Defendant in response argues that Plaintiff's Complaint did not contain
 6 sufficient information for Defendant to know whether the case was removable to
 7 federal court. Specifically, Defendant states that it did not receive information
 8 supporting the existence of complete diversity until March 17, 2022—thus,
 9 Defendant argues that the removal was timely because Defendant filed its Notice
 10 of Removal on April 14, 2022, within 30 days of the date where it “may first be
 11 ascertained that the case is one which is removable.” 28 U.S.C. § 1446(b)(3).

12 The Court denies Plaintiff's Motion to Remand. The Ninth Circuit has stated
 13 that the requirement that a defendant remove a case to federal court 30 days after
 14 receiving the initial pleading “only applies if the case stated by the initial pleading
 15 is removable on its face.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694
 16 (9th Cir. 2005). However, if the defendant instead receives an “indeterminate
 17 pleading,” where it is unclear whether the case is removable, the Ninth Circuit has
 18 found the 30-day deadline does not apply. *Id.* The Ninth Circuit has also declined
 19 to impose a burden on the defendant to investigate the necessary jurisdictional
 20 facts within the first 30 days of receiving an indeterminate pleading—it reasoned
 21 that, if the 30-day window under § 1446(b)(1) were “to apply to all initial
 22 pleadings unless they clearly reveal that the case is not removable, defendants
 23 would be faced with an unreasonable and unrealistic burden to determine
 24 removability within thirty days of receiving the initial pleading.” *Id.* at 693–94.

25 Here, Plaintiff's Complaint stated “Plaintiff, PHAT N STICKY, LLC, is a
 26 domestic limited liability company, with its principal place of business at 2611 N
 27 WOODRUFF RD., STE A., SPOKANE VALLEY, WA 99206-4138.” ECF No. 1-
 28 1 at 2. Plaintiff's Complaint also stated “Plaintiff is a WA i502 producer-processor,

ORDER DENYING PLAINTIFF'S MOTION TO REMAND # 3

1 farming top shelf cannabis in Washington State . . . The state-of-the-art growing
 2 facility and perfected growing techniques executed by Plaintiff's amazing team
 3 have resulted in Plaintiff's parent company becoming one of the largest producers
 4 in the state of Washington." *Id.*

5 However, for the purposes of determining diversity jurisdiction, "an LLC is
 6 a citizen of every state of which its owners/members are citizens." *Johnson v.*
 7 *Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). This is in
 8 contrast to a corporation, which is a citizen of (1) the state where its principal place
 9 of business is located; and (2) the state in which it is incorporated." *Id.* Thus, when
 10 a complaint only includes allegations regarding an LLC's residency and/or
 11 principal place of business, this counts as an indeterminate pleading that is
 12 insufficient to support whether diversity jurisdiction exists. *See Harris*, 425 F.3d at
 13 693 ("Harris' state court complaint did not allege Brown's current citizenship, only
 14 his past residence. Indeed, it is not uncommon for a state court pleading to omit the
 15 necessary facts needed to determine diversity."); *see also Buschman v. Anesthesia*
 16 *Bus. Consultants LLC*, 42 F. Supp. 3d 1244, 1248 (N.D. Cal. 2014) (finding that
 17 the notice of removal was insufficient to support diversity jurisdiction because the
 18 defendant only included information about the LLC's residency and principal place
 19 of business and not information on the citizenship of each of the LLC members).

20 Here, after receiving Plaintiff's indeterminate pleading, Defendant's counsel
 21 contacted Plaintiff's counsel by email on February 8, 2022 to inquire about the
 22 citizenship of Plaintiff's members. ECF No. 2, Exhibit 1 at 13. Defendant's
 23 counsel specified that the purpose for inquiring about this topic was to determine
 24 whether there was diversity. *Id.* at 11.

25 On March 8, 2022, Plaintiff's counsel replied to Defendant's counsel, stating
 26 "our office has confirmed that each member of Phat N Sticky, LLC, is a resident of
 27 the State of Washington." *Id.* at 9. However, on March 11, 2022, Defendant's
 28 counsel responded, stating that "It is not sufficient to state that each member of

ORDER DENYING PLAINTIFF'S MOTION TO REMAND # 4

1 Phat N Sticky, LLC is a resident of the State of Washington. We require a
 2 statement . . . that each member of Phat N Sticky, LLC was a citizen of the State of
 3 Washington at the time of the filing of the complaint and presently. This is
 4 required to establish diversity for removal to federal court.” *Id.* at 7.

5 On March 17, 2022, Plaintiff’s counsel sent over answers to Defendant’s
 6 Interrogatories, confirming that each member of Phat n Sticky, LLC was a citizen
 7 of the State of Washington. ECF No. 2, Exhibit 2.

8 Based on the Ninth Circuit’s decisions in *Harris* and *Johnson*, because
 9 Plaintiff’s Complaint did not include information regarding the citizenship of each
 10 of its members, Plaintiff’s Complaint was an indeterminate pleading for the
 11 purposes of diversity jurisdiction. Additionally, Defendant did not receive
 12 information regarding the citizenship of Plaintiff’s members until March 17, 2022,
 13 at which point its 30-day period for removal began. 28 U.S.C. § 1446(b)(3). Thus,
 14 because Defendant filed its Notice of Removal on April 14, 2022, removal was
 15 timely—therefore, the Court denies Plaintiff’s Motion to Remand.²

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19 ² Plaintiff argues that Defendant “was aware or should have been aware” that the
 20 case was removable because, under Washington law, a business entity cannot
 21 obtain a marijuana license unless all members of the business entity have resided in
 22 Washington for at least six months prior to applying for the license. ECF No. 6 at 3
 23 (citing Wash. Rev. Code § 69.50.331(b) and Wash. Admin. Code 314-55-020).
 24 However, this argument (1) contravenes the Ninth Circuit’s rule in *Harris* that the
 25 30-day window from the time of receipt of the initial pleading only applies if the
 26 complaint is removable on its face, not just that it contains a clue about
 27 removability; and (2) still ignores the distinction between residency and citizenship
 28 for the purposes of diversity jurisdiction

ORDER DENYING PLAINTIFF’S MOTION TO REMAND # 5

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion to Remand, ECF No. 6, is **DENIED**.

3 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
4 this Order and provide copies to counsel.

5 **DATED** this 9th day of June 2022.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".
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10 Stanley A. Bastian
11 Chief United States District Judge
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